

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 414 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT and
MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed
to see the judgements? Yes

2. To be referred to the Reporter or not? Yes

3. Whether Their Lordships wish to see the fair copy
of the judgement? No

4. Whether this case involves a substantial question
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge?
No

SHANABHAI BABARBHAI VASAVA

Versus

STATE OF GUJARAT

Appearance:

MR BS SUPEHIA for the appellants (appointed)
Ms Ameer Yagnik, APP, for Respondent No. 1

CORAM : MR.JUSTICE J.N.BHATT and
MR.JUSTICE A.M.KAPADIA

Date of decision: 06/11/98

ORAL JUDGEMENT(Per J.N.Bhatt, J.)

The appellants, who are original accused persons in Sessions Case No.158/90, have challenged the conviction judgment and order recorded by the Additional Sessions Judge in Sessions Case No.158/90 dated 15.2.91 under section 302 read with section 34 of the Indian Penal Code (IPC), by filing this appeal under section 374 of the Code of Criminal Procedure, 1973 Code).

Skeleton facts relevant for the purpose of appreciation of the merits of the case may, shortly, be stated at this stage. The prosecution case has been that the appellant No.1, original accused No.1, had illicit relation with the wife of prosecution witness Bakor Gordhan. The incident in question occurred on 8.6.90 in the early morning, at about 1.00 a.m. which was preceded by an incident in which the deceased Jayanti Mulji @ Bechar had rebuked and had also given slaps to accused No.1, Shana, for having illicit relation with Lalita. Prosecution case, therefore, is that the crime was committed because of the said motive.

Accused No.1, Shana, was armed with an axe and accused No.2 was armed with knife. They attacked the deceased, Jayanti @ Bechar, in the early morning at about 1.00 a.m. on 8.6.90 when the deceased was sleeping on a cot in front of his house in open varandha. Accused No.1 gave axe blows and accused No.2 gave knife blows on the person of the deceased, as a result of which, deceased was profusely bleeding and he was shifted to the dispensary where he was declared dead. The prosecution witness No.2, Raju, son of the deceased, prosecution witness 3, Manjula, wife of the deceased and one Dharmishta, daughter of the deceased were sleeping in the house. Son Raju and, prosecution witness Manjula wife of the deceased were also sleeping in the open varandha near the cot of the deceased.

On hearing the sound of blows, PW 3, Manjula woke up and she found both the accused persons near the cot of the deceased. Accused No.1 was armed with axe whereas accused No.2 was armed with knife, as seen by Manjula. She had also seen accused persons running away.

An intimation was sent to the Police Station in the form of a vardhi produced, at Ex.6 given by the Police from the hospital and PSI, PW 11, A.B.Jhala, registered the offence and started the investigation. After recording the statements of the prosecution witnesses and preparing discovery panchnama and collecting the medical evidence, chargesheeted the accused persons for having committed

offence punishable under section 302 read with section 34 of the IPC before the Court of JMFC, who committed the case to the Sessions Court at Baroda and it was registered as Sessions Case No.158/90 in which the charge was framed against the accused persons, at Ex.2, under section 302 read with section 114 and in the alternative read with section 34 and also under section 135 of the Bombay Police Act to which the accused persons denied the charge and claimed to be tried.

Upon examination and assessment of the evidence of the prosecution placed before the Trial Court, the Trial Court found the accused persons guilty of offence punishable under section 302 read with 34 of the IPC and imposed minimum sentence of imprisonment for life.

We have, dispassionately, examined the evidence of the prosecution and we have heard learned advocate Mr Supehia appearing for the accused appointed in legal aid and learned Additional Public Prosecutor Mrs.Yagnik. In our view, the following aspects have emerged unquestionably.

- (1) Deceased Jayantibhai @ Bechar died a homicidal death in view of the medical evidence of prosecution witness 10, Dr.V.N.Dave, who had conducted the post-mortem examination and the PM report at Ex.30.
- (2) Deceased had sustained as many as 7 external injuries which were possible by sharp cutting instrument like axe and knife.
- (3) Injuries sustained by the deceased were sufficient in the ordinary course of nature to cause death and the cause of death was on account of multiple injuries which resulted in to shock and haemorrhage.
- (4) The incident occurred in the early morning on 8.6.90 at about 1.00 a.m. in the varandha portion of the house of the deceased situated in village Daniyava of Baroda district. It was a full moon night.
- (5) Accused No.1 Shana was the servant of prosecution witness 4, Bakor Gordhan, who had either intimate or illicit relationship with Lalita, wife of Bakor.
- (6) Both the accused persons were working as house servants. They were also staying near the house

of deceased. Accused No.1 and PW 4 Bakor were staying in the adjoining huts. However, thereafter, prosecution witness 7, brother of the deceased, Babu Mulji, allowed the accused to stay with him.

The ultimate conclusion of the Trial Court that both the accused persons are guilty for the offence having committed under section 302 read with section 34 of the IPC and the resultant punishment have remained unquestionable. The prosecution case is substantially reinforced by eye witnesses, PW 2, Raju, son of the deceased, PW 3, Manjula, wife of the deceased, PW 4, Bakor, neighbour of the deceased, PW 5, Ratansinh, also a neighbour of the deceased and also by the evidence of PW 7, Babu Mulji, brother of the deceased.

We have carefully and with full of circumspection examined the evidence of the prosecution witnesses threadbare. PW 2, Raju, examined at Ex.14, son of the deceased, has clearly testified that on account of the illicit relationship of accused No.1, Shana, with the wife of Bakor, his father rebuked and slapped the accused only a week before the main incident which was the bone of contention. He has clearly deposed that on hearing the shouts raised by his mother immediately after the infliction of blows by the accused persons on the body of his father, he woke up and found both the accused persons there. He further stated that the accused No.1 was armed with axe and accused No.2 was armed with a knife. He has also identified the muddamal axe at article 12 and knife at article 13 before the Court. It was a full moon night, obviously, therefore, he was in a position to identify the accused persons. Therefore, the contention that there is no proper identification of the accused persons because of night and because of absence of light is not sustainable. There is no reason to discard the evidence of eye witness PW 2, Raju as his evidence has remained totally unshaken.

PW 3, Manjula, wife of the deceased who was sleeping in the adjoining cot of the deceased at the relevant time woke up on hearing the sounds of blows. She had seen both the accused persons inflicting blows on the body of her husband. She has also supported the prosecution case that the accused No.1 had illicit relationship with the wife of Bakor because of which the deceased had given slaps to the accused No.1, Shana. She is quite reliable. Her evidence is not at all vulnerable. There is no reason to disbelieve her testimony. She fully supports the version of the prosecution and the narration of the

account given by her son Raju.

PW 4, Bakor Gordhan, is examined at Ex.16. He has clearly stated in his evidence that both the accused persons were his servants at the relevant time and later on accused No.1, Shana, was sheltered by the brother of the deceased Babu Mulji. Before that accused No.1 was also the neighbour and they stayed in the adjoining huts. He has clearly stated in his evidence that accused No.1 had illicit relation with his wife Lalita which was objected by him and the deceased and therefore the deceased had to pay a heavy penalty for it. There is no reason to disbelieve his testimony. He is also a neighbour of the deceased. So is the case of PW 5, Ratansing Ex.17. He has also fully reinforced the prosecution story. His evidence has remained unshaken. In so far as the previous incident is concerned, he has fully supported the prosecution case by deposing that about nine to ten days prior to the main incident, deceased and Bakor had objected to the illicit relationship between the accused No.1 Shana and the wife of Bakor, Lalita. It is also very clear from the evidence of the prosecution witnesses that when the deceased questioned accused No.1 and slapped him regarding his illicit relationship with the wife of Bakor, Lalita, he had threatened the deceased. PW 6, Ratilal, who is also a neighbour, who immediately rushed to the venue of offence stated that he had seen accused No.1 running away with axe and accused No.2 running away with knife. His evidence fully supports the eye witnesses. PW 7 Babu Mulji, brother of the deceased is examined at Ex.19, who was also residing in the back portion of the house of the deceased. Of course, he has not seen the main incident. But he has supported the prosecution case about the motive ascribed to the crime.

In so far as the discovery panchnama is concerned, prosecution witness 8, Dolatsing Amarsing is examined at Ex.22. The discovery panchnama is proved by leading evidence of panch and also by the evidence of the Investigating Officer, PSI, PW 11, A.B.Jhala at Ex.31. However, after having gone through the entire panchnama and considering the important contours and tenor of the provisions of section 27 of the Evidence Act, the prosecution is not in a position to make much profit of it as all material ingredients of section 27 have not been fully established. It is a joint discovery panchnama which should always be deprecated.

Learned advocate for the accused, vehemently, contended before us that the identity of the accused persons is not

established. He has also submitted before us that the evidence of the prosecution witnesses is not coherent and consistent. He has also highlighted one another aspect saying that the evidence of all witnesses on the main point is like a parrot version evidence and therefore it creates a cloud of doubt about the authenticity of the prosecution. All these submissions are seriously opposed to by the learned Additional Public Prosecutor.

In our opinion, having analysed and assessed the prosecution evidence "in-extenso", the aforesaid contentions raised by the learned advocate for the accused in defence are without substance. Therefore, the contentions raised on behalf of the accused in defence must fail.

We have successfully noticed from the evidence that both the accused persons had entertained common intention to do away with the life of the deceased and in accomplishing the common intention, they had attacked the deceased on a midnight when he was sleeping in his cot in the varandha of his house. The manner and mode in which the infliction of blows were given coupled with the various other circumstances emerging from the record of the present case, we are, fully, convinced that both the accused persons are guilty for having committed heinous crime of murder of the deceased Jayanti Mulji @ Bechar as he had annoyed accused No.1, Shana, who was having illicit relationship with the wife of Bakor, Lalita. So the motive ascribed in the commission of crime is also proved to the hilt. Apart from that, when direct evidence of four eye witnesses and other circumstances supporting the prosecution case stood proved, the motive pales into insignificance. No doubt, in the present case, even motive is established. Therefore, we have no hesitation in upholding and affirming the impugned judgment and ultimate conclusion recorded by the Trial Court.

With the result, this appeal at the instance of the accused persons under section 374 of the Code deserves to be thrown overboard. Accordingly, it is dismissed.

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